

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 24, 2020**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS NAVARRO,

Defendant.

No: 1:17-cr-2025-LRS-1

ORDER GRANTING MOTION TO  
VACATE CONVICTION

BEFORE THE COURT is the Defendant's Motion to Vacate Conviction in Light of *Rehaif v. United States*, 139 S.Ct. 2191 (2019), pursuant to 28 U.S.C. § 2255. ECF No. 82. This matter was heard on July 24, 2020 without oral argument. The Court, having reviewed the record, the parties' briefing, and the relevant authorities, is fully informed. For the reasons discussed below, Defendants' Motion to Vacate Conviction, ECF No. 82, is GRANTED.

**BACKGROUND**

In June 2017, Defendant was charged with being a felon in possession of a firearm. ECF No. 1. He was indicted on June 13, 2017 for being a felon in

1 possession of a firearm and ammunition under 18 U.S.C. § 922(g)(1). ECF No. 13.  
2 On August 14, 2017, Defendant pled guilty to the indictment. ECF No. 46, 48.  
3 Pursuant to the plea agreement, Defendant conceded that he had previously been  
4 convicted of a crime punishable by a term exceeding one year. ECF No. 48. On  
5 November 17, 2017, Defendant was sentenced to 51 months imprisonment with  
6 credit for time served, to be followed by three years of supervised release. ECF No.  
7 60.

8 At the time of Defendant's plea, he had three prior state convictions which  
9 were the basis for the charge of felon in possession of a firearm: (1) felony violation  
10 of a protection order domestic violence, which has a standard sentencing range of 6-  
11 12 months with an actual sentence of 6 months; (2) felony harassment of another –  
12 threat to kill, which has a standard sentencing range of 1-3 months with an actual  
13 sentence of one month; and (3) second degree unlawful possession of a firearm,  
14 which has a standard sentencing range of 3-8 months with an actual sentence of 6  
15 months. ECF No. 87-1 at 2-3, 87-2 at 2, 87-3 at 2. The potential maximum sentence  
16 for each crime was five years. *Id.*

## 17 DISCUSSION

18 Defendant's plea agreement acknowledged that the Government could prove  
19 the facts necessary for conviction under the three elements of Section 922(g)(1):

20 (1) The defendant knowingly possessed a firearm and ammunition;

21 (2) The firearm had been shipped from one state to another; and

1           (3) At the time Defendant possessed the firearm and ammunition, he had  
2 been convicted of a crime punishable by imprisonment for a term exceeding one  
3 year. The plea agreement was a correct application of the law at the time it was  
4 entered.

5           Defendant's Motion to Vacate his conviction under 18 U.S.C. § 922(g)(1) is  
6 primarily based on a 2019 U.S. Supreme Court decision, *Rehaif v. United States*, 139  
7 S.Ct. 2191. In that case, the Supreme Court reinterpreted section 922(g) and  
8 concluded that "in a prosecution under 18 U.S.C § 922(g), the Government must  
9 prove both that the defendant knew he possessed a firearm and that he knew he  
10 belonged to the relevant category of persons barred from possessing a firearm."  
11 *Rehaif*, 129 S.Ct. at 2200. Defendant argues the Court should vacate his conviction  
12 because the requisite *mens rea* under *Rehaif* was not established. ECF No. 82 at 4-8.  
13 The Government contends Defendant is not entitled to relief under *Rehaif* because  
14 his claim is procedurally barred since he did not challenge the voluntariness or  
15 intelligence of his plea at sentencing or on direct appeal. ECF No. 86 at 2.

16           Although *Rehaif* appears to apply to this case, the Court need not decide  
17 whether Defendant's claim is procedurally barred because the Government concedes  
18 other grounds exist to grant Defendant's request for relief. ECF No. 86 at 4.

19           At the time of the plea agreement, the determination of whether a prior  
20 conviction was a felony for purposes of 18 U.S.C. § 992(g) was based on the  
21 potential maximum sentence defined by the applicable state criminal statute. *See*  
*U.S. v. Murillo*, 422 F.3d 1152 (9th Cir. 2005). Under that framework, Defendant's

1 plea agreement was lawful because his prior convictions qualified as felonies since  
2 each crime carried a potential maximum penalty of five years imprisonment. ECF  
3 No. 87-1 at 2-3, 87-2 at 2, 87-3 at 2. However, in 2019 the Ninth Circuit decided  
4 *United States v. Valencia-Mendoza*, 912 F.3d 1215, and *United States v. McAdory*,  
5 935 F.3d 838, which together held that a conviction under Washington State statutes  
6 is a felony for purposes of section 922(g)(1) if the defendant's conviction actually  
7 exposed the defendant to more than a year of imprisonment under the mandatory  
8 sentencing scheme rather than the statutory maximum penalty. Under this  
9 framework, none of Defendant's prior convictions were felonies for purposes of  
10 section 922 (g)(1) since the mandatory sentencing ranges were 1-3 months, 3-8  
11 months, and 6-12 months, and Defendant was sentenced to no more than 6 months  
12 imprisonment for any prior conviction. ECF No. 87-1 at 2-3, 87-2 at 2, 87-3 at 2.

13 The Government concedes that none of Defendant's prior convictions had a  
14 standard range of more than one year of imprisonment and that current law would  
15 not support the charge that was the basis for the guilty plea today. ECF No. 86 at 4.  
16 Further, the Government waives possible challenges to Defendant's request on the  
17 basis of the limitations period or other defenses. ECF No. 86 at 5. Thus, the  
18 Government concedes that Defendant is entitled to relief. ECF No. 86 at 5.

19 Based on the foregoing, the Court concludes that Defendant is entitled to  
20 relief as a matter of law and his Motion to Vacate Conviction is GRANTED.

21 Accordingly, IT IS HEREBY ORDERED:

1. Defendant's Motion to Vacate Conviction, **ECF No. 82**, is **GRANTED**.

2. The Judgement and Sentence dated November 17, 2017, **ECF No. 60**,  
is **VACATED**.

**IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order and provide copies to the U.S. Attorney and counsel.

**DATED** July 24, 2020.

Lonny R. Suko  
LONNY R. SUKO  
Senior United States District Judge